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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,622	11/02/2001	William P. Schenk JR.	99,315/1105.024	5791

7590

07/16/2003

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EXAMINER

OEN, WILLIAM L

ART UNIT

PAPER NUMBER

2855

DATE MAILED: 07/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/003,622

Applicant(s)

SCHENK, WILLIAM P.

Examiner

William L Oen

Art Unit

2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6 & 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Claim Objections***

Claims 34-38 are objected to because of the following informalities: "magnet rotary pointer" on line 3 should presumably read "magnetic rotary pointer" in order to have clear antecedence. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence, Jr. (U.S. Patent No. 4,016,827) in view of Filippone (U.S. Patent No. 4,924,221) both cited by Applicant.

Art Unit: 2855

Lawrence, Jr explicitly or inherently teaches, for example in Figures 1 & 2 and in the corresponding portions of his specification, all of the essential features of the claimed dial indicator, including a magnetic rotary pointer, said magnetic rotary pointer being magnetically (not mechanically) coupled to a magnetically adjustable potentiometer which is mounted to a front side of the dial indicator.

It is noted that Lawrence, Jr is silent as to the particular application, e.g., to remotely monitor a fuel tank. Filippone, in the same field of endeavor as Lawrence, Jr, teaches a dial indicator similar to that taught by Lawrence, Jr and claimed by Applicant, but explicitly used for remotely monitoring a fuel tank. In view of this teaching by Filippone, it would have been obvious to one having ordinary skill in the art at the time of the invention to have used the dial indicator of Lawrence, Jr for remotely monitoring a fuel tank, if desired. Motivation for this modification is found in Lawrence, Jr's suggestion of uses for his dial indicator where mechanical linkage is not suitable, e.g., for a pressure vessel, (See, e.g., col. 1, lines 40 et seq. of Lawrence, Jr).

To have applied the dial indicator of Lawrence, Jr to monitor liquid level of natural gas, propane, liquid ammonia, etc. are considered mere environment of use field limitations and as such obvious design choices clearly within the purview of one having ordinary skill in the art at the time of the invention, if desired. Similarly, voltage dividers and multiple electrical connections are considered mere obvious design choices clearly within the purview of one having ordinary skill in the art at the time of the invention, if desired, because of their wide spread and well known use in the art.

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The method steps for upgrading and the "kit" claims for upgrading a dial indicator are rendered obvious in view of the apparatus of Lawrence, Jr. as well as its stated purpose, function, and results.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William L Oen whose telephone number is (703) 308-5161. The examiner can normally be reached on 10:30 am - 9:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on 703-305-4816. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4900.



William L Oen  
Primary Examiner  
Art Unit 2855

WL Oen  
July 10, 2003